



*Fritz Daily
1901 Roosevelt Ave.
Butte, MT 59701*

January 15, 2017

Honorable Judge Sam Hadden;

My name is Fritz Daily. I am a life-long Butte resident and a former seven-term member of the Montana Legislature. I served in the Legislature when the Atlantic Richfield Company now British Petroleum Company closed the Anaconda Smelter, the Berkeley Pit and the Butte mines. I have been actively involved and working on solving Butte Superfund issues for thirty plus years. **Ironically I wrote letters on this issue to Judge Hatfield where your Court is named and located.**

I am a member of Silver Bow Creek Headwaters Coalition who along with the Montana Standard filed an unsuccessful Intervener Motion to open the Consent Decree Negotiations on Butte Priority Soils. The time has passed for us to appeal this decision. As a result, we are no longer represented by Counsel on this issue.

As Senator Jon Tester has stated numerous times, "if you have good information, you make good decisions and if you have poor information you make poor decisions".

Judge Hadden, it is common knowledge, using good science what must be accomplished, both legally under Superfund Law and the Montana Constitution to have a clean and restored Butte Montana, the Berkeley Pit and Silver Bow Creek flowing through Butte. This includes the EPA, the State of Montana and Arco/BP.

I have debated for the past couple of weeks about writing this letter. I have great respect for the Judicial Process and for you personally. I am concerned and I don't believe it is fair that you are going to be forced to make the final decision on Butte Priority Soils including Silver Bow Creek flowing through Butte without having the necessary and important information to make that decision. I do not believe the EPA and Arco/BP are going to provide for you that critical information. **I believe the entire economic, environmental and social future of my community is in your hands.**

Our attorney, Jim Goetz, has no knowledge I am writing this letter. However, I feel compelled to write it to express to you my grave concern about the Superfund cleanup and restoration Butte has received and to offer my thoughts on what needs to be accomplished to responsibly complete that task.

Added thought not in original letter---Two basic premises were used in making this unsatisfactory and what I call incompetent decision on the cleanup of Silver Bow Creek at its headwaters. #1 it was based on the fact that Silver Bow Creek flowing through Butte was sewer, and #2 it was based on the fact that it was technically impracticable to responsibly clean and restore the Creek and its corridor and to leave contaminated "waste in place". Both of these premises have now been proven to be totally false and inaccurate.

To briefly support my thoughts I would like to offer two specific reasons for my concern; On November 28, 2016 between **3000 and 4000 Canadian Snow Geese perished on the contaminated Berkeley Pit water.** In April 2009, through research by the Montana Bureau of Mines we learned that the **groundwater in the Parrott Tailings Area adjacent to the Butte Civic Center is more toxic than Berkeley Pit water.** The 2006 Record of Decision was negotiated without this critical and valuable information.

In addition, The Montana Bureau of Mines has performed substantial scientific research requested and funded by the State of Montana and Butte Natural Resource Damage Programs that seriously calls into question the research used to make the 2006 Butte Priority Soils Record of Decision.

In 2010, Silver Bow Creek Headwaters Coalition filed a successful lawsuit against the State of Montana over the name of Silver Bow Creek flowing through Butte. District Judge Brad Newman's writings in his final Order, speaks volumes of my concerns on Butte Superfund cleanup. **He wrote; "This litigation seeks to ensure that the State of Montana and its agencies follow the law." He wrote; "In this case the Plaintiffs stand in the shoes of government. They are seeking as a private attorney general to force the State to act appropriately with respect to the State's waters held in trust for the public. Judge Newman also confirmed in his decision that the Creek is in fact a watercourse and a "creek" under the laws and Constitution of the State of Montana.**

I strongly believe the 2006 Record of Decision on Butte Priority Soils that includes Butte's Silver Bow Creek was made without the Environmental Protection Agency performing the necessary "due diligence" to make that decision. **The proposed remedy is definitely not protective of human health and the environment as is a requirement of Superfund law and the Montana Constitution.**

While it is a requirement of Superfund law that the public has the opportunity to provide comments at the completion of the Consent Decree. However, as you know this information is summarized for you by the Environmental Protection Agency and you do not receive the actual letter of correspondence of concerned citizens. For example; **I along with eighteen citizens submitted comments on the recent Five Year Review of Butte Superfund Sites and none of those comments were included in the actual final review.** A cursory acknowledgement of the letters was included, but none of the actual substance of the comments was included.

In a publication written in August 2005 called "Cut and Run" written by a reputable group of local Hydrologists and Hydro-Geologists they seriously questioned and criticized the negotiated the 2006 Record of Decision on Butte's portion of Silver Bow Creek and the Parrott Tailings area. They wrote; ***The U.S. Environmental Protection Agency is prepared to walk away from the nation's largest Superfund site. More precisely, EPA is prepared to allow the responsible party, Atlantic Richfield Company (now British Petroleum/ARCO), to walk away without fully cleaning up the site. As a result, millions of cubic yards of mine tailings, smelting slag and other wastes will drain in perpetuity into the headwaters of the Clark Fork and Columbia Rivers. And the City/County of Butte-Silver Bow will be relegated into an industrial waste heap with dim economic prospects for recovery. Sadly I believe with the current Butte Priority Soils Record of Decision we are moving in this direction.***

Rather than expanding on my thoughts in this letter, and truthfully not knowing if the letter is even ethical, I am going to mail to you separately my thoughts and the necessary information you need for making this critical decision. I sincerely hope you find my information useful and helpful in making your decision. I would also be more than willing to discuss this information with you in person if that is appropriate.

Sincerely,

Fritz Daily

